CITIZEN ADVISORY COMMITTEE RETREAT
ISSUE E - EMISSION CAPS

Should major industrial sources have requirements in the proposed rules that place a cap on their annual mercury emissions?

ALTERNATIVES:

1. For industrial sources, require energy efficiency improvements in lieu of a cap.
2. Eliminate the rule requirement for major stationary sources and create a provision to allow them to opt-in if they want to create emission reduction credits.
3. Eliminate the requirements for major stationary sources.
4. Maintain existing rules proposal.

COMMITTEE DISCUSSION:

The committee did not reach agreement on the role for industrial sources in the proposed rules. A positive development was interest, shared by many committee members, in an energy efficiency improvement program for industrial combustion sources instead of an emission cap. It was understood that additional discussions are needed to determine what this approach may involve.

Some committee members are doubtful that industrial sources can provide enough emission reduction credits to support the emissions offset requirement for new sources in the proposed rules. Therefore, they believe there is no need to establish baselines and set emission caps on industrial sources. Some committee members don't believe that industrial sources have significant mercury emissions, with a very few exceptions, and therefore regulation under these rules isn't appropriate. These representatives believe that an opt-in approach (Alternative 2.) is all that should be considered in the proposed rules.

Some members of the committee do favor emission caps and feel industrial sources should be regulated in the proposed rules.

PROVISIONS IN THE PROPOSED RULES:

NR 446.03 Baseline mercury emissions. This section outlines the requirements for establishing baseline mercury emissions for major electric utilities and major industrial sources. This section also includes the procedures for newly affected sources to establish their baseline mercury emissions. These are sources that become major after the promulgation date of the rules. For major utilities baseline mercury emissions set the level from which reductions are required. The presumptive baseline is the average of annual mercury emissions for 1998, 1999 and 2000. There is an opportunity to request an alternative baseline if the presumptive baseline is felt to be not representative of normal operations. Baseline mercury emissions would become effective 4 years after promulgation of rules.

For the purpose of this rule, a major utility has annual mercury emissions of 100 pounds or more and a major stationary source has annual mercury emissions of 10 pounds or more.

NR 446.05 Mercury emission offsets. Requires that new or modified sources with mercury emissions of 10 pounds or more provide emission offsets at a ratio of 1.5 to 1.0 as a requirement

to obtain a permit to construct. This offset requirement would not become effective until 4 years after promulgation.

NR 446.08 Pollution reduction projects. This section outlines the procedure for a mercury emission source to create credits for trading. To create emission credits requires a reductions from an established baseline.

NR 446.09 Registry of certified emission reductions. Requires the department to maintain a registry of emission credits including availability and use.

NR 446.10 Compliance alternatives and reporting requirements. Requires a compliance report for major utilities and major stationary sources annually. If a mercury emission baseline is exceeded a source has until August 1st of the following year to true up through the use of emission credits.

NR 446.11 Annual mercury emissions determination. Establishes the procedures that must be used to determine annual mercury emissions.

ADDITIONAL BACKGROUND:

Emission caps for all sources emitting over 10 pounds annually were included in the proposed rules as a way to support a viable trading program. In total this accounts for greater than 90% of reported emissions on the air emission inventory and includes 23 facilities. Only four major utilities, utilities having mercury emissions greater than 100 pounds annually, have a reduction requirement in the proposed rules. In addition to promoting trading, emission caps and offset provisions insure that mercury emissions in Wisconsin do not grow.

The Technical Advisory Group has drafted a brief concerning this issue.

SUMMARY OF PUBLIC COMMENT:

Wisconsin Paper Council – A cap, by itself, would offer no environmental benefit. It would only prevent future increases. A cap unfairly penalizes existing sources as compared to new sources. A cap on mercury emissions from a coal-fired boiler would effectively be a cap on all emissions – and a cap on economic growth. The 10-pound threshold level is arbitrary and effects small emission sources at large industrial facilities. The use of historical emissions to establish a cap may cause compliance problems if future testing shows emissions that are higher. Wisconsin statutes impose restrictions on the ability of the Department to regulate sources subject to a federal MACT standard. Paper industry recovery boilers are subject to a federal MACT standard and should not be subject to the mass cap requirement.

Stora Enso – A mercury emission cap placed on sources would essentially be a cap on all emissions and would also be a cap on productivity and economic growth. It is not feasible to control mercury from our coal-fired power boilers and pulp mill chemical recovery furnaces. This would cap production, pulp and paper making, at historic baseline levels.

Wisconsin Manufacturers and Commerce – WMC objects to both the emission cap and emission offset requirements proposed for major stationary sources. The emission cap, likely to effect coal-fired industrial boilers, will in effect be a cap on productive capacity and it is also likely that emission offsets will not be available for companies to expand or locate in the state. WMC also

believes that the 10-pound threshold is arbitrary, provides little environmental benefit and should be applied on a unit basis not a facility-wide basis.

Wisconsin Electric - Wisconsin Energy does not believe that setting a cap on industrial sources will create a sufficient market to support the proposed offset provisions for new or expanded utility sources. Industrial sources that make operational or physical changes to reduce mercury emissions in order to voluntarily create offsets expose their facilitates to the risk of additional state and federal permitting review, and potential additional control requirements.

COMMITTEE MEMBER INTERESTS:

Jeff Schoepke - WMC
Regulating facilities emitting as little as 10 pounds per year also produces little, if any, environmental benefits. Assuming an unregulated 10- pound facility's emissions would grow 10 percent in any given year, DNR "captures" all of one pound through its cap. Assuming that 10 percent of those emissions end up in Wisconsin, DNR's regulation of a 10-pound source prevents little more than an ounce of mercury from ending up in the state's environment.

Existing major stationary source will not be able to increase production because of the cap and the likely inability to obtain necessary offsets, particularly those companies that are using coal-fired boilers operating at less than capacity during the baseline years. Given the high demand and tenuous electricity supply in Wisconsin, a utility boiler is likely to be operating at 90 percent or greater of its capacity. However, given current economic circumstances, an industrial boiler, such as that of a paper mill, is more likely to be currently operating at 40 or 50 percent of its design capacity. The cap and lack of offsets will prohibit such companies from increasing their energy output to meet increased production targets in future years. These companies will find it easier to expand out of state than to convert to natural gas.

In addition to limiting their ability to grow, capped sources would face substantial regulatory costs with the regulatory scheme proposed, including burdensome baseline calculations and other administrative burdens. Further, if an industrial facility chooses not to restrict production or if a utility must increase output to serve its customers, they face expensive control or fuel switching costs. There is no justification for imposing these costs on such small sources.

WMC also objects to aggregating all emissions at a facility. For example, a 10-pound facility may have several boilers that together breach the 10-pound threshold. In effect, such a facility with three boilers has a 3.3-pound cap on each boiler. Again, DNR offers no explanation as to why this makes sense. In fact, the petition for this rulemaking by environmental groups argued for a 10-pound per boiler threshold. Whatever threshold level is chosen, WMC requests that DNR consider using a unit versus a facility threshold. This is consistent with other air quality program, as well as the petition.

Because of the concerns noted above, and because the "major stationary sources" listed in the proposed rule are subject to existing or will be subject to proposed federal mercury regulations, WMC believes the state rule should not regulate major stationary sources.

Marc Looze - WED
An emissions cap, by its very nature, would be beneficial because it prohibits an increase in Hg emissions. However, a cap is the "lowest bar" to set achievement. Other coal burning facilities (e.g. Manitowoc and MG&E's Blount Street) that emit between 10 and 100 pounds of Hg should not be exempted from making reductions.

Wayne Stroessner – Random Lake
Emission Caps for utilities should be based upon the number of units of energy produced;
Emission Caps for other boilers should be based upon the number of BTUs or other units produced;
Emission Caps for incinerators should be based upon the baseline per tonnage burned;
Emission Caps for chlor-alkali plants should be very rigid and subsidies should be used to encourage the paper industry to use "green" paper manufacturing processes;
New or modified sources are already covered in the RULE and might not need revisions.

Mark Yeager - ECCOLA
Yes. A cap is necessary to prevent future emission increases. It would also limit an incentive for utilities/industry to increase emissions as a baseline is being established. There is no evidence of limitation of economic growth other than the belief that the WI economy can only be built on industries that are allowed unchecked Hg emissions, e.g. investing in a clean, strong renewable energy industry will also grow the WI economy.

Ed Wilusz – WPC
This is an issue where it will be important to include information from the TAG issue brief and to point out the relationship of emission caps to other issues, such as baseline determination, trading, and the lack of variance provision. In particular, it is important that emission reestimates from paper industry boilers be presented (or summarized) and concerns with the viability of a mercury trading program be noted.